

KEVIN T. CONWAY, ESQ.  
ATTORNEY AT LAW  
LICENSED IN  
N.Y., N.J., CT.

80 Red Schoolhouse Road, Suite 110  
Spring Valley, NY 10977  
Tel: (845) 352-0206  
Fax: (845) 352-0481

c/o DeCotiis, Fitzpatrick, Cole & Giblin, LLC  
61 South Paramus Road, Suite 250  
Paramus, NJ 07652  
Tel: (201) 928-1100

May 15, 2020

The Honorable Judge John G. Koeltl  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

***Re: 1:19-cv-07189-JGK, Malibu Media, LLC v. John Doe, Subscriber ID 98.116.191.111-Plaintiff's Fifth Motion to Extend the Deadline to File Joint Discovery/Case Management Plan and Request for Adjournment of the Initial Pretrial Conference Set for May 19, 2020 at 4:30 p.m.***

Dear Judge Koeltl:

Plaintiff, Malibu Media, LLC, moves for entry of an order extending the time within which Plaintiff has to file a Joint Discovery/Case Management Plan currently set for May 12, 2020 and adjourn the Initial Pretrial Conference on May 19, 2020, and states:

1. Plaintiff filed a complaint against the Internet subscriber assigned IP address 98.116.191.111 ("Defendant") alleging that Defendant copied and distributed one or more of Plaintiff's copyrighted works. *See* CM/ECF 1.

2. Since Defendant was only known to Plaintiff by Defendant's IP address, in order to obtain Defendant's true identity, Plaintiff filed a Motion for Leave to Serve a Third-Party Subpoena on the Defendant's Internet Service Provider seeking Defendant's identity [CM/ECF 6].

3. On September 3, 2019, Plaintiff was granted leave to serve a third-party subpoena on Defendant's ISP, Verizon to obtain the Defendant's identifying information [CM/ECF 7]. Plaintiff issued the Subpoena September 8, 2019 and received the ISP's response on or about November 18, 2019.

4. Upon receipt of the subscriber's identifying information, Plaintiff conducted a thorough investigation and determined that a good faith basis exists to name the subscriber as the defendant infringer.

5. On December 15, 2019, Plaintiff filed its Amended Complaint to name the Defendant [CM/ECF 14] and requested that the Clerk issue a summons as to the Defendant.

6. On or about December 19, 2019, Plaintiff sent the Summons and Amended Complaint to its process server. The process server has made multiple attempts to serve the Defendant but has not been able to effectuate service.

7. Therefore, Plaintiff asked its process server for an affidavit detailing its service efforts. On May 11, 2020, Plaintiff filed its Motion for Alternate Service seeking leave of this Honorable Court to serve Defendant by alternate means. At this time, Plaintiff is awaiting this Court's ruling.

8. Pursuant to the Court's Order, the Initial Pretrial Conference is set for May 19, 2020, therefore, the parties are due to meet, prepare, and file a proposed Joint Discovery/Case Management Plan by May 12, 2020. However, because Defendant has not been served with process, Plaintiff has not yet served its initial disclosures or been able to discuss discovery deadlines with Defendant. For the foregoing reasons, Plaintiff respectfully requests an adjournment of the Initial Pretrial Conference and an extension of the pretrial deadlines until after Defendant has been served with the amended complaint.

9. This extension will allow undersigned sufficient time to effectuate service, for Defendant to retain an attorney, and thereafter for the parties to serve its initial disclosures and confer regarding discovery deadlines.

10. This motion is made in good faith and not for the purpose of undue delay.

11. The parties will not be prejudiced by the granting of this extension.

12. This is the third request for an adjournment.

WHEREFORE, Plaintiff respectfully requests an adjournment of the Initial Pretrial Conference set for May 19, 2020 and an extension of the deadline to file the Joint Discovery/ Case Management Plan.

Respectfully Submitted,

By: /s/Kevin T. Conway  
Kevin T. Conway (KC-3347)  
[kcmalibu@gmail.com](mailto:kcmalibu@gmail.com)  
80 Red Schoolhouse Road, Suite 110  
Spring Valley, NY 10977-6201  
T: (845) 352-0206  
F: (845) 352-0481  
*Attorneys for Plaintiff*

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ Kevin T. Conway  
Kevin T. Conway, Esq.